

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

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|----------------------------|---|--------------------------------|
| JING GAO, et al. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 3:16-cv-00323 |
| |) | |
| BLUE RIDGE LANDFILL TX, LP |) | |
| |) | |
| Defendant. |) | |

**BLUE RIDGE LANDFILL TX, LP’S OBJECTIONS TO PLAINTIFFS’
IMPROPER AND LATE-FILED SUMMARY JUDGMENT EVIDENCE**

Plaintiffs requested—and BRL did not oppose—that this Court grant leave to Plaintiffs for the opportunity to submit supplemental briefing **solely for the purpose** of “setting forth the deposition testimony that was not yet available when Plaintiff’s responded to Defendant’s motion”—namely the TCEQ depositions taken in August 2018. (*See* Doc. 64.) Instead, Plaintiffs submitted exhibits with their Supplemental Response (Doc. 70) well beyond the scope of that leave and in violation of this Court’s local rules.

All of these late-filed materials should be struck from the record.

OBJECTIONS

First, Plaintiffs submitted (for the first time) deposition testimony dating from 2017 and early 2018 from BRL’s corporate representative as well as from six of the eight

Plaintiffs. (Plaintiffs' Exhibits 10-14, 17-18.) BRL objects to Plaintiffs' Exhibits 10-14 and 17-18, and moves that these exhibits be struck as untimely.

Second, in violation of this Court's local rules, Plaintiffs submitted nine full deposition transcripts in their entirety, failing in many instances to even provide citations. (Plaintiffs' Exhibits 1, 9-14, 17-18.) BRL objects to Plaintiffs' Exhibits 1, 9-14, and 17-18 as being both untimely and violating this Court's local rules. *See* Court's Procedures at ¶ 5(E.)

Third, Plaintiffs submitted a set of incomplete charts of TCEQ complaints with no identifying bates label and about which no witness has testified. (Plaintiffs' Exhibits 2-3.) BRL objects to Plaintiffs' Exhibits 2-3 for failing to be authenticated by affidavit or any other method. FED. R. CIV. P. 56(c)(2).

Fourth, Plaintiffs submitted four declarations from certain of the named Plaintiffs. (Plaintiffs' Exhibits 15-16 and 19-20.) BRL objects to these declarations as untimely and an impermissible attempt to alter prior testimony to avoid summary judgment. *Doe v. Dallas Indep. Sch. Dist.*, 220 F.3d 380, 386 (5th Cir. 2000). Plaintiffs previously testified that the odor in Shadow Creek Ranch comes and goes and that the smell was the same as what they identified when they first moved to the neighborhood. *See, e.g.*, chart in BRL's Reply to Motion for Summary Judgment describing odors at pp 3-7. Plaintiffs now offer declarations that state the odors became worse in 2015. BRL objects that Exhibits 15-16 and 19-20 are untimely and an attempt to alter prior testimony.

CONCLUSION

For the foregoing reasons, BRL respectfully requests the Court grant its Objections to Plaintiffs' improper and untimely evidence and strike Plaintiffs' Exhibits 1-3 and 9-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served on all counsel of record on this 1st day of October, 2018, by electronic service through email service:

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